

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

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CEDAR RAPIDS DISTRICT OFFICE

SAILORS, INC. and MISSISSIPPI RIVER
REVIVAL,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,^{1/}

Defendants.

Consolidated
Case No. C98-134-MJM

SIERRA CLUB,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

JOINT NOTICE OF FILING OF
SETTLEMENT AGREEMENT

The United States Environmental Protection Agency and plaintiffs in the above-captioned matters the United States Environmental Protection Agency ("EPA") have filed a Consent Decree and a motion requesting the Court to enter that Decree as an order of the Court. The parties are also filing a Settlement Agreement. This Settlement Agreement, which is attached hereto, is filed only for informational purposes as set forth in the Consent Decree. No action by the Court with respect to this Settlement Agreement is requested.

^{1/} Christine T. Whitman and William W. Rice are hereby substituted for as defendants in this matter pursuant to Fed. R. Civ. P. 25(d)(1).

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: 22 October 2001

By: Robert M. Butler
For EILEEN MCDONOUGH
Environmental Defense Section
Environment and Natural Resources Division
P.O. Box 23986
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United States Attorney
Northern District of Iowa

Dated 22 October 2001

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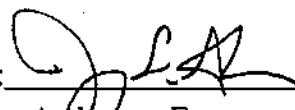
Martha R. Steincamp
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FOR PLAINTIFFS:

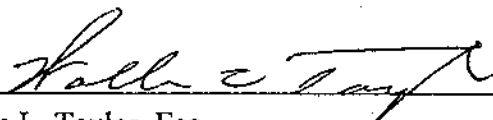
Dated: 10/18/2001

By: 
Lawrence P. McLellan, Esq.
Sullivan & Ward, P.C.
801 Grand Avenue, Suite 3500
Des Moines, IA 50309-2719

Dated: 10/19/01

By: 
Jerry Anderson, Esq.
Associate Dean and Professor
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Dated: 10-19-01

By: 
Wallace L. Taylor, Esq.
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Cedar Rapids, IA 52401

SETTLEMENT AGREEMENT

WHEREAS, on November 19, 1998, Plaintiffs Sailors, Inc. and Mississippi River Revival and on February 25, 1999, Plaintiff Sierra Club filed complaints in this action (Case No. C98-134-MJM and Case No. C99-30-MJM) against the United States Environmental Protection Agency, Christine T. Whitman, Administrator, and William W. Rice, Acting Regional Administrator, EPA Region VII, (collectively ("EPA") pursuant to Section 505(a)(2) of the Federal Water Pollution Control Act, as amended (hereinafter referred to as the ("Clean Water Act" or ("CWA")), 33 U.S.C. § 1365(a)(2), and under the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706 (hereinafter the "APA"). On April 8, 1999, the above referenced cases were consolidated under Case No. 98-134-MJM.

WHEREAS, for purposes of this Settlement Agreement, Sailors, Inc., Mississippi River Revival, and Sierra Club will be referred to jointly as "Plaintiffs."

WHEREAS, the parties have entered into a Consent Decree in the consolidated cases referenced above that sets forth certain EPA commitments regarding the Clean Water Act Section 303(d) Total Maximum Daily Loads ("TMDLs") program in the State of Iowa ("Consent Decree").

WHEREAS, the parties intend for this Settlement Agreement to set forth terms for certain matters related to monitoring, the continuing planning process ("CPP"), and the review of NPDES permits in Iowa that are not addressed in the Consent Decree.

WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without any admission of fact or law, which they consider to be a just, fair and equitable resolution of the claims raised in this action. The parties agree that it is in the interest of the public, the parties and judicial economy to resolve the issues in this action.

NOW, THEREFORE, the parties agree to this settlement in the manner, terms and conditions as follows:

GENERAL TERMS

1. The parties to the Settlement Agreement are Plaintiffs and the EPA. The parties understand that the defendants named in the complaints were sued in their official capacities, and any obligations or duties arising under this Settlement Agreement are to be performed by EPA. This settlement applies to, is binding upon, and inures to the benefit of the parties, their officers, employees, members, successors, and assigns.

2. For purposes of this Settlement Agreement, the following terms shall have the meaning provided below. All references in this Settlement Agreement to sections of the United States Code ("U.S.C."), the Code of Federal Regulations ("C.F.R.") or "implementing regulations" are to those sections in effect as of the date of entry of this Settlement Agreement or to any amendments to these sections when those amendments become effective.

a. "EPA" means the United States Environmental Protection Agency and its successors, Christine T. Whitman, the Administrator of EPA, or the Administrator's duly authorized representative; William W. Rice, the Acting Regional Administrator of the United States Environmental Protection Agency, Region VII and their successors;

b. The "United States" means the United States of America, including its officers, agencies, departments and instrumentalities;

c. "Water Quality Limited Segment" or ("WQLS") has the meaning provided at 40 C.F.R. § 130.2(j);

d. "Total Maximum Daily Loads" ("TMDL") has the meaning provided at 40 C.F.R. §130.2(i);

e. "State" or "Iowa" means the 29th state of the union, admitted as a sovereign state of the United States, forming a Constitution and a state government, including its officers, agencies, departments and instrumentalities.

THE CONTINUING PLANNING PROCESS

3. Not later than ninety (90) days from the Effective Date of this Settlement Agreement, EPA will provide Plaintiffs and any other interested person upon request with a copy of the State's most recent CPP.

4. EPA will review the State's CPP for consistency with CWA Section 303(e), 33 U.S.C. § 1313 (e), and EPA's implementing regulations at 40 C.F.R. § 130.5. Not later than one (1) year from the Effective Date, EPA shall provide a written summary of its review, including any recommendations for revisions to the CPP, to Plaintiffs, Iowa, and to any other interested person upon request.

5. EPA will keep a current copy of the State's CPP at EPA, Region VII, for public review during the pendency of this Settlement Agreement.

6. If EPA finds that Iowa's CPP is not consistent with the CWA and its implementing regulations, and if the State does not modify its CPP in response to EPA's review to be consistent with the CWA and its implementing regulations, EPA shall take appropriate action as provided under the CWA and accompanying regulations.

NPDES REVIEW

7. EPA shall request notice from the State of Iowa by November 15th of each year of all NPDES permits that Iowa intends to issue within the next 12 months for waters for which a TMDL has been established. If EPA receives such notice from the State, EPA shall provide Plaintiffs with a copy of the notice.

8. For those NPDES permits that EPA in its discretion reviews, when the permit is for a discharge to a water for which a TMDL has been established, EPA will include in its review consideration of whether the effluent limitations in such permits are consistent with such TMDLs.

9. For those NPDES permits that EPA in its discretion reviews, where EPA provides written comments to the State of Iowa related to whether effluent limitations consistent with established TMDLs have been incorporated into such NPDES permits, or where EPA objects to any NPDES permit proposed by the State of Iowa based on failure to incorporate effluent limitations consistent with established TMDLs into that permit, EPA shall provide a copy of those comments or objection to the Plaintiffs after such comments or objection are provided to the State.

MONITORING PROGRAM STUDY

10. Within thirty-six (36) months after the Effective Date of this Settlement Agreement, EPA agrees to conduct a study of Iowa's surface water quality monitoring program which is designed to assess the quality of surface waters in the State of Iowa. Within eighteen (18) months after the Effective Date of this Settlement Agreement, EPA agrees to prepare an

interim report on the progress of the study, which shall include results and conclusions obtained to date concerning Iowa's surface water quality monitoring program, and make such interim report available to Iowa, Plaintiffs and to any other interested person upon request. In conducting this study of Iowa's surface water quality monitoring program, EPA will pay particular attention to that portion of this program that results in identifying impaired waterbodies for the Section 303(d) List. Within six (6) months after completion of the study, EPA will make a written summary of its findings, including recommendations, available to Iowa, Plaintiffs, and to any other interested person upon request.

REPORTING

11. In order to assist Plaintiffs in assessing compliance with the Consent Decree, EPA shall either: provide Plaintiffs with copies of approved TMDLs and supporting decision documents; or place these documents on a Web site or Internet location or in a file at EPA's Region VII office accessible to Plaintiffs and the public within thirty (30) days of EPA approval.

EFFECTIVE DATE

12. This Settlement Agreement shall become effective upon the entry of the Consent Decree by the Court (the "Effective Date"). If for any reason the District Court does not enter the Consent Decree, the obligations set forth in this Settlement Agreement are null and void.

RELEASE BY PLAINTIFFS

13. This Settlement Agreement and, when entered, the Consent Decree, shall constitute a complete and final settlement of all claims which were asserted, or could have been asserted, by Plaintiffs against the United States in this consolidated action.

14. Plaintiffs hereby release, discharge, and covenant not to assert any and all claims, causes of action, suits or demands of any kind whatsoever in law or equity which they may have had, or may now or hereafter have, against the United States based on matters which were asserted or could have been asserted by Plaintiffs in this action, except as provided by Paragraphs 20 and 21 of the Consent Decree.

15. Plaintiffs reserve the right to challenge in a separate lawsuit the merits of any final action taken by EPA pursuant to this Settlement Agreement. EPA reserves all its defenses to such suits.

AGENCY DISCRETION

16. Except as expressly provided herein, nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to EPA by law. Nothing in this Settlement Agreement shall be construed to limit or modify EPA's discretion to alter, amend, or review from time to time any actions EPA may perform pursuant to this Settlement Agreement, or to amend or promulgate regulations consistent with the CWA.

COSTS

17. EPA agrees that Plaintiffs are prevailing parties on certain issues and are entitled to reasonable attorneys' fees and costs accrued as of the Effective Date of this Settlement Agreement. The parties will attempt to reach agreement as to the appropriate amount of the recovery. Plaintiffs shall file any request for attorneys' fees within sixty (60) days of the Effective Date of this Settlement Agreement. EPA shall have sixty (60) days to respond to Plaintiffs' fee request.

NOTICE

18. Any notice required or made with respect to this Settlement Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Settlement Agreement, the contact persons are:

For the Plaintiffs:

Lawrence P. McLellan, Esq.
Sullivan & Ward, P.C.
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Jerry Anderson, Esq.
Associate Dean and Professor
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Regina Thiry
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and

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Regional Counsel
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Kansas City, Kansas 66101

and

Chief
Environmental Defense Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Upon written notice to the other parties, any party may designate a successor contact person for any matter relating to this Settlement Agreement.

REPRESENTATIVE AUTHORITY

19. Each undersigned representative of the parties to this Settlement Agreement certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Settlement Agreement. By signature below, all parties consent to entry of this Settlement Agreement.

MUTUAL DRAFTING

20. It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by the parties. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

COUNTERPARTS

21. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party has signed all other counterparts.

EFFECT OF SETTLEMENT AGREEMENT

22. The Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any party .

COMPLIANCE WITH OTHER LAWS

23. No provision of this Settlement Agreement shall be interpreted so as to constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the APA, 5 U.S.C. §§ 551-559, 701-706, the CWA, or any other law or regulation, either substantive or procedural.

APPLICABLE LAW

24. This Settlement Agreement shall be governed and construed under the laws of the United States.

THIRD-PARTY BENEFICIARIES

25. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

DISPUTE RESOLUTION AND REMEDY FOR NON-COMPLIANCE

26. In the event of a disagreement between the parties concerning the interpretation or performance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the

other parties with written notice of the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within 60 days of such meeting, then the Plaintiffs' sole remedy is to reactivate the litigation in SAILORS v. EPA, Case No. C98-134-MJM (N.D. Iowa), to seek an order pursuant to the Clean Water Act to obtain the same action identified in this Settlement Agreement. EPA does not waive or limit any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under the Settlement Agreement.

FORCE MAJEURE

27. The parties recognize that the performance of this Settlement Agreement is subject to fiscal and procurement laws and regulations of the United States, which include but are not limited to the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et. seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Settlement Agreement. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Settlement Agreement, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be extended one day for each day of the delay. EPA will provide Plaintiffs with notice as soon as is reasonably possible in the event EPA invokes this provision of the Settlement Agreement and will provide Plaintiffs with an explanation of EPA's basis for invoking this provision.

MODIFICATION

28. This Agreement may be modified or amended only with the written consent of all parties.

TERMINATION

29. This Settlement Agreement shall terminate on the same date as the Consent Decree in Consolidated Case No. C98-134-MJM.

The parties consent to the form and substance of the foregoing Settlement Agreement
For the Defendant the United States of America:

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Dated 10/10/01

By: Eileen McDonough
EILEEN MCDONOUGH
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United States Attorney
Northern District of Iowa

Dated 22 October 2001

By: Robert M. Butler
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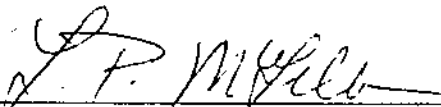
Of Counsel for the Defendants
and the United States of America:

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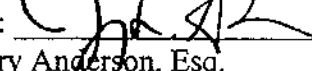
Martha R. Steincamp
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

FOR PLAINTIFF SAILORS, INC. and MISSISSIPPI RIVER REVIVAL:

Dated 10/18/2001


By: 
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801 Grand Avenue Suite 3500
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Dated 10/19/01

By: 
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Associate Dean and Professor
Drake University Law School
Cartwright Hall
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FOR PLAINTIFF SIERRA CLUB:

Dated 10-19-01

By: 
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